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9

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12  
13 S.A., a minor, by and through his mother  
14 and guardian, Maritza A., individually and  
on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17  
18 TIKTOK, INC., a California corporation,  
and BYTEDANCE, INC., a Delaware  
19 corporation,

20 Defendants.  
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Case No. 5:20-cv-03294

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff S.A., a minor, by and through his mother and guardian, Maritza A.  
 2 (“Plaintiff”), on behalf of himself and other similarly-situated individuals, brings this Class  
 3 Action Complaint against Defendants TikTok, Inc. (“TikTok”), both individually and as a  
 4 successor-in-interest to Musical.ly, Inc. (“musical.ly”), and ByteDance, Inc. (“ByteDance”) (collectively, “TikTok”), and alleges as follows:

## 6 INTRODUCTION

7 1. Plaintiff brings this action for damages and other legal and equitable remedies  
 8 resulting from the illegal actions of TikTok in collecting, storing, and using Plaintiff’s and  
 9 other similarly-situated individuals’ biometric identifiers<sup>1</sup> and biometric information<sup>2</sup>  
 10 (collectively, “biometrics”) without informed written consent, in direct violation of the  
 11 Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”).

12 2. The Illinois Legislature has found that “[b]iometrics are unlike other unique  
 13 identifiers that are used to access finances or other sensitive information.” 740 ILCS 14/5(c).  
 14 “For example, social security numbers, when compromised, can be changed. Biometrics,  
 15 however, are biologically unique to the individual; therefore, once compromised, the  
 16 individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw  
 17 from biometric-facilitated transactions.” *Id.*

18 3. In recognition of these concerns over the security of individuals’ biometrics,  
 19 the Illinois Legislature enacted BIPA, which provides *inter alia* that a private entity like  
 20 TikTok may not obtain and/or possess an individual’s biometrics unless it: (1) informs that  
 21 person in writing that biometric identifiers or information will be collected or stored, *see* 740  
 22 ILCS 14/5(b); (2) informs that person in writing of the specific purpose and length of term  
 23 for which such biometric identifiers or biometric information is being collected, stored and  
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25  
 26 <sup>1</sup> A “biometric identifier” is any personal feature that is unique to an individual,  
 27 including fingerprints, iris scans, DNA and “face geometry,” among others.

28 <sup>2</sup> “Biometric information” is any information captured, converted, stored, or shared  
 based on a person’s biometric identifier used to identify an individual.

1 used, *see id.*; (3) receives a written release from the person for the collection of his or her  
2 biometric identifiers or information, *see id.*; and (4) publishes publically available written  
3 retention schedules and guidelines for permanently destroying biometric identifiers and  
4 biometric information. 740 ILCS 14/15(a).

5 4. In direct violation of each of the foregoing provisions of § 15(a) and § 15(b) of  
6 BIPA, TikTok is actively collecting, storing, and using — without providing notice, obtaining  
7 informed written consent, or publishing data retention policies — the biometrics of millions  
8 of unwitting individuals who use the TikTok app.

9 5. The TikTok App is one of the most popular social media networking apps in  
10 the United States. It allows users to create, view, and share three to fifteen-second videos  
11 of dancing, lip-syncing, and other forms of self-expression, as well as short looping videos  
12 of three to sixty seconds.

13 6. The TikTok App's playful features rely on the undisclosed use of its users'  
14 private, biometric information. The App scans a user's facial geometry before running an  
15 algorithm to determine a user's age, and uses facial scans to allow users to superimpose  
16 animated facial filters onto moving faces in videos on the App.

17 7. TikTok fails to inform the App's users that their biometric data is being  
18 collected, captured, received, obtained, stored, and/or used by the App.

19 8. TikTok similarly fails to disclose what it does with that biometric data, who has  
20 access to that data, and whether, where, and for how long that data is stored.

### 21 **PARTIES**

22 9. Plaintiff S.A. is a minor and a resident and citizen of Illinois. S.A. brings this  
23 action through his mother and guardian, Maritza A., also a resident of Illinois.

24 10. S.A. has been a registered user of the TikTok App since at least 2019 and, in  
25 that time, has uploaded numerous videos to the App and used its facial filters on his own  
26 image in that process.



18. The use of facial recognition technology in the commercial context presents numerous privacy concerns. During a 2012 hearing before the United States Senate Subcommittee on Privacy, Technology, and the Law, U.S. Senator Al Franken stated that “there is nothing inherently right or wrong with [facial recognition technology, but] if we do not stop and carefully consider the way we use [it], it may also be abused in ways that could threaten basic aspects of our privacy and civil liberties.”<sup>3</sup> Senator Franken noted, for example, that facial recognition technology could be “abused to not only identify protesters at political events and rallies, but to target them for selective jailing and prosecution.”<sup>4</sup>

19. The Federal Trade Commission (“FTC”) has raised similar concerns, and recently released a “Best Practices” guide for companies using facial recognition technology.<sup>5</sup> In the guide, the Commission underscores the importance of companies’ obtaining affirmative consent from consumers before extracting and collecting their biometric identifiers and biometric information from digital photographs.

20. As alleged further below, TikTok failed to obtain consent from anyone when it introduced its facial recognition technology.

## II. Illinois’s Biometric Information Privacy Act

21. In 2008, Illinois enacted BIPA due to the “very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information.” Illinois House

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<sup>3</sup> *What Facial Recognition Technology Means for Privacy and Civil Liberties: Hearing Before the Subcomm. on Privacy, Tech. & the Law of the S. Comm. on the Judiciary*, 112th Cong. 1 (2012), available at <https://www.judiciary.senate.gov/imo/media/doc/12-7-8FrankenStatement.pdf> (last accessed May 13, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Facing Facts: Best Practices for Common Uses of Facial Recognition Technologies*, Federal Trade Commission (Oct. 2012), available at <http://www.ftc.gov/sites/default/files/documents/reports/facing-facts-best-practices-common-uses-facial-recognition-technologies/121022facialtechrpt.pdf> (last accessed May 13, 2020).

1 Transcript, 2008 Reg. Sess. No. 276. BIPA makes it unlawful for a company to, *inter alia*,  
 2 “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a  
 3 customer’s biometric identifier<sup>6</sup> or biometric information, unless it first:

4 (1) informs the subject . . . in writing that a biometric  
 5 identifier or biometric information is being collected or stored;

6 (2) informs the subject . . . in writing of the specific  
 7 purpose and length of term for which a biometric identifier or  
 8 biometric information is being collected, stored, and used; and

9 (3) receives a written release executed by the subject of  
 10 the biometric identifier or biometric information or the subject’s  
 11 legally authorized representative.

12 740 ILCS 14/15 (b).

13 22. Section 15(a) of BIPA also provides:

14 A private entity in possession of biometric identifiers or  
 15 biometric information must develop a written policy, made  
 16 available to the public, establishing a retention schedule and  
 17 guidelines for permanently destroying biometric identifiers and  
 18 biometric information when the initial purpose for collecting or  
 19 obtaining such identifiers or information has been satisfied or  
 20 within 3 years of the individual’s last interaction with the private  
 21 entity, whichever occurs first.

22 740 ILCS 14/15(a).

23 23. As alleged below, TikTok’s practices of collecting, storing, and using its users’  
 24 biometric identifiers and information derived from videos uploaded in Illinois without  
 25 informed written consent violate all three prongs of § 15(b) of BIPA. TikTok’s failure to  
 26 provide a publicly available written policy regarding its schedule and guidelines for the  
 27

28 <sup>6</sup> BIPA’s definition of “biometric identifier” expressly includes information collected  
 about the geometry of the face (*i.e.*, facial data obtained through facial recognition  
 technology). *See* 740 ILCS 14/10.

1 retention and permanent destruction of individuals' biometric information also violates §  
2 15(a) of BIPA.

### 3 4 **III. TikTok Violates Illinois's Biometric Information Privacy Act.**

5 24. ByteDance Ltd., the parent of ByteDance, Inc., is a Beijing-based company  
6 founded in 2012.

7 25. ByteDance Ltd. first launched the TikTok App (originally called "A.me" in  
8 China but now called "Douyin") for the China market in September 2016. In 2016, the App  
9 was launched for iOS and Android in markets outside of China.

10 26. In November 2017, TikTok's parent company, ByteDance, purchased  
11 musical.ly, a startup based in Shanghai with an office in Santa Monica, California.

12 27. Musical.ly was a social media video platform (the "musical.ly App") that, like  
13 the TikTok App, allowed users to create short lip-sync and comedy videos. The musical.ly  
14 App was first launched in 2014 and, like the TikTok App, used facial scans to allow users to  
15 superimpose animated facial filters onto the moving faces of video subjects.

16 28. The TikTok App has become one of the world's fastest-growing social media  
17 platforms and enjoys a massive U.S. audience. It has been downloaded more than 1.3 billion  
18 times worldwide and more than 120 million times in the United States. The App is the most  
19 downloaded non-game app in the world, and often outranks competitors such as Facebook,  
20 Snapchat, and Instagram.

21 29. "About 60% of TikTok's 26.5 million monthly active users in the United States  
22 are between the ages of 16 and 24." Greg Roumeliotis, et al., *U.S. opens national security*  
23 *investigation into TikTok*, Reuters (Nov. 1, 2019), *available at*  
24 [https://www.reuters.com/article/us-tiktok-cfius-exclusive/exclusive-u-s-opens-national-](https://www.reuters.com/article/us-tiktok-cfius-exclusive/exclusive-u-s-opens-national-security-investigation-into-tiktok-sources-idUSKBN1XB4IL)  
25 [security-investigation-into-tiktok-sources-idUSKBN1XB4IL](https://www.reuters.com/article/us-tiktok-cfius-exclusive/exclusive-u-s-opens-national-security-investigation-into-tiktok-sources-idUSKBN1XB4IL) (last accessed May 13, 2020).

26 30. The TikTok App utilizes an artificial intelligence tool in the App that  
27 automatically scans the faces of individuals appearing in videos posted to the App, which  
28 estimates the subjects' ages. *See, e.g.,* Georgia Wells Yoree Koh, *TikTok Wants to Grow Up*,



1 *but Finds it Tough to Keep Kids Out*, Wall St. Journal (Feb. 16, 2020), *available at*  
 2 [https://www.wsj.com/articles/tiktok-wants-to-grow-up-but-finds-it-tough-to-keep-kids-](https://www.wsj.com/articles/tiktok-wants-to-grow-up-but-finds-it-tough-to-keep-kids-out-11581858006)  
 3 [out-11581858006](https://www.wsj.com/articles/tiktok-wants-to-grow-up-but-finds-it-tough-to-keep-kids-out-11581858006) (last accessed May 13, 2020).

4 31. The TikTok App, like the musical.ly App before it, features a variety of face  
 5 filters that users can superimpose onto a subject's moving face, and which allow for editing  
 6 of facial features.

7 32. Both of these tools work by scanning the biologically unique facial geometry  
 8 of individuals appearing in videos posted to the TikTok App.

9 33. Upon information and belief, TikTok, Inc. shares its users' private information,  
 10 including in at least some cases biometric information, with other members of its corporate  
 11 family during the Class period, including Defendant ByteDance, Inc., and with its advertising  
 12 partners. *See, e.g.*, TikTok Privacy Policy (as of May 13, 2020), *available at*  
 13 <https://www.tiktok.com/legal/privacy-policy?lang=en> (last accessed May 13, 2020)  
 14 ("We may share your information with a parent, subsidiary, or other affiliate of our corporate  
 15 group."); *id.* ("We share . . . personal information . . . with service providers and business  
 16 partners . . . for business purposes, including research, . . . administering contests and special  
 17 offers, . . . email deployment, [and] advertising.").

18 34. TikTok never informs its users that it collects, captures, receives, obtains,  
 19 stores, shares or uses their biometric information. Users never consent to such use.

20 35. TikTok's use of Illinois users' face scans violates all three prongs of Section  
 21 15(b) of BIPA.

22 36. Further, TikTok never informs users of its app of the purposes or length of  
 23 time for which their face scans or other biometric information and identifiers are collected,  
 24 captured, received, otherwise obtained, stored, and/or used.

25 37. TikTok also violates Section 15(a) of BIPA, by failing to provide users with any  
 26 information regarding retention of biometric information or guidelines for the destruction  
 27 of such information.



**CLASS ACTION ALLEGATIONS**

38. Plaintiff brings this action in his individual capacity and as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of a proposed Class defined as follows:

All individuals who had their biometric identifiers, including scans of face geometry, collected, captured, received, or otherwise obtained by TikTok from videos uploaded within the state of Illinois.

39. Excluded from the Class are TikTok, as well as its officers, employees, agents or affiliates, and any judge who presides over this action, as well as all past and present employees, officers and directors of TikTok. Plaintiff reserves the right to expand, limit, modify, or amend the Class and definitions, including the addition of one or more subclasses, in connection with their motion for class certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

40. The Class meets the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(1), (b)(2), and (b)(3) for all of the following reasons.

41. **Numerosity.** Although the exact number of Class members is uncertain, and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable, believed to amount to millions of persons. The disposition of the claims of these Class members in a single action will provide substantial benefits to all parties and the Court. Information concerning the exact size of the putative class is within the possession of TikTok. The parties will be able to identify each member of the Class after TikTok's document production and/or related discovery.

42. **Commonality.** Common questions of fact and law exist as to all Class members and predominate over any questions that affect only individual Class members, including by example only and without limitation, the following:

a. whether TikTok collected or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;

b. whether TikTok properly informed Plaintiff and the Class that it collected, used, and stored their biometric identifiers or biometric information;

1 c. whether TikTok obtained a written release (as defined in 740 ILCS 1410)  
2 to collect, use, and store Plaintiff's and the Class's biometric identifiers or biometric  
3 information;

4 d. whether TikTok developed a written policy, made available to the public,  
5 establishing a retention schedule and guidelines for permanently destroying biometric  
6 identifiers and biometric information when the initial purpose for collecting or obtaining  
7 such identifiers or information has been satisfied or within three years of their last  
8 interaction, whichever occurs first;

9 e. whether TikTok used Plaintiff's and the Class's biometric identifiers or  
10 biometric information to identify them;

11 f. whether TikTok's violations of BIPA were committed intentionally,  
12 recklessly, or negligently; and

13 g. the proper measure of statutory and punitive damages and the  
14 availability and appropriateness of declaratory and injunctive relief.

15 43. **Typicality.** All of Plaintiff's claims are typical of the claims of the proposed  
16 Class they seek to represent in that: Plaintiff's claims arise from the same practice or course  
17 of conduct that forms the basis of the Class claims; Plaintiff's claims are based upon the  
18 same legal and remedial theories as the proposed Class and involve similar factual  
19 circumstances; there is no antagonism between the interests of Plaintiff and absent Class  
20 members; the injuries that Plaintiff suffered are similar to the injuries that Class members  
21 have suffered.

22 44. **Adequacy.** Plaintiff will fairly and adequately represent the Class in that: (1)  
23 there is no conflict between Plaintiff's claims and those of other Class members; (2) Plaintiff  
24 has retained counsel who are skilled and experienced in class actions and who will vigorously  
25 prosecute this litigation; (3) Plaintiff's claims are typical of the claims of Class members.

26 45. **Predominance.** The proposed action meets the requirements of Federal Rule  
27 of Civil Procedure 23(b)(3) because questions of law and fact common to the Class  
28 predominate over any questions which may affect only individual Class members.



1 (3) receives a written release executed by the subject of the biometric identifier or biometric  
2 information . . . .” 740 ILCS 14/15(b) (emphasis added).

3 50. Defendants are corporations and thus qualify as a “private entities” under  
4 BIPA. *See* 740 ILCS 14/10.

5 51. Plaintiff and Class members are individuals who had their “biometric  
6 identifiers,” including scans of face geometry, collected, captured, received, or otherwise  
7 obtained by TikTok from videos that were uploaded to the TikTok App from within the  
8 state of Illinois. *See* 740 ILCS 14/10.

9 52. Plaintiff and Class members are individuals who had their “biometric  
10 information” collected by TikTok through its collection and use of their “biometric  
11 identifiers.”

12 53. TikTok systematically and automatically collected, used, and stored Plaintiff’s  
13 and Class members’ biometric identifiers and/or biometric information without first  
14 obtaining the written release required by 740 ILCS 14/15(b)(3).

15 54. In fact, TikTok failed to properly inform Plaintiff or the Class in writing that  
16 their biometric identifiers and/or biometric information were being “collected or stored” on  
17 the TikTok App, nor did TikTok inform Plaintiff or Class members in writing of the specific  
18 purpose and length of term for which their biometric identifiers and/or biometric  
19 information were being “collected, stored and used” as required by 740 ILCS 14/15(b)(1)-  
20 (2).

21 55. In addition, TikTok does not publicly provide a retention schedule or  
22 guidelines for permanently destroying the biometric identifiers and/or biometric  
23 information of Plaintiff or Class members, as required by BIPA. *See* 740 ILCS 14/15(a).

24 56. By collecting, storing, and using Plaintiff’s and the Class’s biometric identifiers  
25 and biometric information as described herein, TikTok violated the rights of Plaintiff and  
26 each Class member to keep private these biometric identifiers and biometric information, as  
27 set forth in BIPA.  
28



**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

Dated: May 14, 2020

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